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**1994 Wis Eth Bd 6****LOCAL CODE; DISQUALIFICATION; EMPLOYMENT CONFLICT-  
ING WITH OFFICIAL DUTIES; IMPROPER USE OF OFFICE**

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The Ethics Board advises that a member of the governing body of a local government unit should not participate in any labor issues in which a union is involved or that could affect the union's interests while the member's law firm simultaneously represents that union.

OEB-94-6 (September 28, 1994)

Facts

[1] This opinion is based upon these understandings:

- a. You serve as attorneys for a local governmental unit's governing body.
- b. A member of that body is a lawyer and a shareholder in a law firm that a labor union, retains to represent its members in disciplinary and other specific cases. The firm does not represent the union in other matters.
- c. The member does not personally represent employees on the union's behalf nor does the member derive any income from the firm's representation.
- d. The union soon will represent employees' interests in collective bargaining and other issues involving the member's local governmental unit.
- e. You indicate that the member: (a) will not in his official capacity participate in any decision concerning actions against individual employees; (b) will receive no compensation from the law firm that is derived from the firm's representation of the union; (c) will disclose both to the union and the government body the potential for conflicts of interest and request waivers allowing participation in other labor-management issues; and (d) will not participate in the law firm's representation of the union.

Questions

[2] The Ethics Board understands your question to be:

Consistent with Wisconsin's Code of Ethics for Local Public Officials, may a member of the local governmental unit's gov-

erning body, in his or her official capacity, participate in votes, discussions, negotiations, and other matters to which the union is a party or which substantially affect the union while the member is simultaneously a shareholder in a law firm representing the union's legal interests?

## Discussion

[3] Section 19.59, *Wisconsin Statutes*, generally prohibits a local public official (1) from using his or her office to obtain anything of substantial value or a substantial benefit for the official or for the benefit of an organization with which the official is associated or (2) from taking any official action substantially affecting a matter in which the official or an organization with which the official is associated has a substantial financial interest.<sup>1</sup> An elected member of a local government unit's governing body is a local public official subject to §19.59.<sup>2</sup>

[4] The member will neither represent, nor derive any financial benefit from the law firm's representation of the union<sup>3</sup> and will not participate in any matters in which the firm is representing the union. It is therefore, unlikely, that the member would be using the member's office or position to obtain anything of value for private benefit.

[5] Moreover, under the circumstances you have described, the union is not an organization with which the Board member appears "associated" as that term is defined by statute.<sup>4</sup> The member appears to be neither an

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<sup>1</sup> Section 19.59(1)(a) and (c), *Wisconsin Statutes*, provides:

**19.59 Codes of ethics for local government officials, employees and candidates. (1)(a)** No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

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**(c)** Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

<sup>2</sup> Under section 19.42(7u) (7w) and (7x), *Wisconsin Statutes*, a local public official includes an individual that holds an elective city office.

<sup>3</sup> The member should insure both that he does not share in any portion of the law firm's income derived from its representation of the union and that his share of the firm's profits from the representation of its other clients is not adjusted to make up for that fact.

officer, director, or authorized representative or agent of the union. Thus, there is no prohibition *per se* on the member's taking part in matters affecting the union and its members.

[6] However, the member's law firm does appear to be an organization with which the member is associated under the statutory definition.<sup>5</sup> By refraining from participation in contested cases in which the member's firm is involved, the member eliminates some concerns raised by the statutory prohibitions. But an equally important question is whether a member of a local government unit's governing body whose law firm represents the labor union that represents the employees working for the member's local governmental unit may participate in other labor matters affecting the union.

[7] We advise that the official not participate in any such matters. First, there may be policy decisions that call upon the member's exercise of official judgment or action (such as issues involving contract negotiations and approval, conditions of employment, grievance procedures, and the like) in which the member's decision could be influenced by the effect that decision could have on the union's willingness to continue to employ the member's law firm.<sup>6</sup> In such situations the member could violate those provisions of the Ethics Code which bar the member from using public office for the benefit of the member's law firm. Second, there may be specific contested cases in which the member is called upon to act, involving union employees as well as members of other unions, that could substantially affect, through their precedential value, the firm's success in cases it handles for the union's members. In these situations as well, the member should refrain from participation to avoid an improper use of office.<sup>7</sup>

[8] As a final caution, the member should note that the member, as a public official, owes an undivided duty of loyalty to the public whom he or she serves.<sup>8</sup> Public policy favors a public official's exercise of his or her duties.

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<sup>4</sup> Section 19.42(2), *Wisconsin Statutes*, provides:

**19.42 Definitions.** In this subchapter:

(2) "Associated", when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer, or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

<sup>5</sup> The Board member would be "associated" with the law firm as "an authorized representative or agent." §19.42(2), *Wisconsin Statutes*.

<sup>6</sup> See, e.g., 10 Op. Eth. Bd. 13 (1988).

<sup>7</sup> *Id.*

<sup>8</sup> 1993 Wis Eth Bd 04; 1992 Wis Eth Bd 33; 1992 Wis Eth Bd 32; 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

As a general matter, occasional and infrequent conflicts may be dealt with by the official's abstaining from participation in official matters. But continuing and frequent conflicts are best dealt with by divesting either the private pursuit or public position.<sup>9</sup>

Advice

[9] The Ethics Board advises that a member of the governing body of a local government unit should not participate in any labor issues in which a union is involved or that could affect the union's interests while the member's law firm simultaneously represents that union.

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<sup>9</sup> *Id.*